IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 92 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRJIBHAI GANESHBHAI WAGHELA

Versus

NARISHBHAI GANESHBHAI WAGHELA

Appearance:

MR SUNIT S SHAH for Petitioner

MR MHM SHAIKH for Respondent No. 1

MR BP GUPTA for Respondent No. 2

RULE SERVED for Respondent Nos. 3,5

MS SONAL R SHAH for Respondent No. 4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 03/10/2002

ORAL JUDGEMENT

1. Heard Mr.Sunit S. Shah, learned advocate appearing for the petitioner and Mr. B.P.Gupta, learned

advocate appearing for the respondent No.2, who is the main contesting party.

2. The present Civil Revision Application is filed against an order dated 04.01.2002 passed by the City Civil Judge, Court No.17, Ahmedabad in Civil Suit No.5695 of 1991 whereby the learned Judge has rejected the application Ex.69. The defendant No.1 petitioner herein has given the application under Order-6, Rule-17 of the Civil Procedure Code for amendment of the written statement.

3. Mr.Sumit S. Shah, learned advocate for the petitioner has submitted that the amendment sought for by the present petitioner in the written statement goes to the root of the matter, as the suit is filed for partition of the properties and if the properties are impartible and necessary amendment to that effect is not allowed to be carried out, it would frustrate the suit and may have an effect on the final disposal of the suit. If the impugned order is varied or reversed by this Court, the suit would ultimately come to an end. However, in view of the amendment made in Section 115 of the Civil Procedure Code and in vie of the provisions contained in Sub-Clause (i) of Section 32(2) of the Amendment Act, 1999, it is clear that if the trial Court would have decided the application in favour of the party applying for the revision or by virtue of order passed by this court, while exercising the revisional jurisdiction under Section 115 of the Civil Procedure Code, if the order passed by the Court below is varied or reversed the suit would be finally disposed of, the Civil Revision Application is maintainable. There is such word that there should be either direct or indirect consequences of disposal of the suit or the order will have an effect on the disposal of the suit.

4. In this view of the matter, I am of the view that since the impugned order is an interim order and the suit is still pending before the trial Court, the present Civil Revision Application is not maintainable, and hence it is rejected. Rule is discharged. No order as to costs.

5. Since the present Civil Revision Application is disposed of only on the ground that it is not maintainable, it is open for the petitioner to raise the contention regarding the effect of the amendment on the disposal of the suit at the appropriate stage before the trial Court.

[K. A. PUJ, J.]

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